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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

v.

CITY OF BURBANK and DOES 1
through 100, inclusive,,

Defendants.

Case No. BC 422252

Assigned to: Hon Jon Shepard Wiley, Jr.

Action Filed: Sept. 22, 2009
Trial Date: November 16, 2010

DEFENDANT'S NOTICE OF MOTION AND
MOTION FOR AN ORDER IMPOSING AN
EVIDENCE SANCTION AGAINST
PLAINTIFF WILLIAM TAYLOR AND FOR
MONETARY SANCTIONS OF \$6,891
AGAINST PLAINTIFF AND HIS COUNSEL
CHRISTOPHER BRIZZOLORA FOR
MISUSE OF THE DISCOVERY PROCESS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
KRISTIN A. PELLETIER IN SUPPORT
THEREOF

Date: May 25, 2010
Time: 8:30 a.m.
Dept.: 50

CITY ATTORNEY
2010 MAY -3 PM 3:04

LA #4843-6059-0854 v2

DEFENDANT'S NOTICE OF MOTION AND MOTION FOR ORDER

1 **TO JON MURPHY, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on May 25, 2010, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, in Department 50 of the above-entitled court, located at 111 North
4 Hill Street, Los Angeles, California, Defendant City of Burbank, will, and hereby does, move for
5 an order that evidence sanctions be imposed against Plaintiff William Taylor ("Plaintiff") that
6 prohibits him from using the testimony elicited at the deposition of Jon Murphy on March 26,
7 2010. Defendant further moves for an order for monetary sanctions in the amount of \$6,891
8 against Plaintiff and his counsel Christopher Brizzolara.

9 The Motion will be based on this notice of motion and motion, the attached memorandum
10 of points and authorities and Declaration of Kristin A. Pelletier, the Separate Statement served
11 and filed concurrently herewith pursuant to California Rules of Court, Rule 3.1345, the deposition
12 lodged herewith pursuant to Rule 3.1116(a) of the California Rules of Court, and on such other
13 and further evidence as may be presented at the hearing on this matter.

14
15 Dated: April 28, 2010

Burke, Williams & Sorensen, LLP

16
17
18 By:

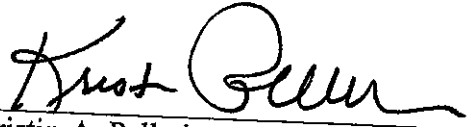

Kristin A. Pelletier
Attorneys for Defendant
City of Burbank

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff William Taylor ("Plaintiff") and his counsel Christopher Brizzolara have engaged in significant discovery misconduct. Plaintiff has chosen to file a civil lawsuit against his employer, the Burbank Police Department, alleging that he was retaliated against based upon his complaints about racism and harassment in the Department. To substantiate his claims, Plaintiff's counsel, Christopher Brizzolara, took the deposition of former Burbank Police Lieutenant Jon Murphy. Mr. Murphy is a third-party witness and not a party to this action. Mr. Murphy arrived at and commenced the deposition unrepresented by counsel. Plaintiff's counsel asked numerous questions regarding conversations between Mr. Murphy and Plaintiff, and Mr. Murphy proceeded to answer those questions. However, once Mr. Brizzolara finished his examination, counsel for the City, Kristin Pelletier, attempted to cross-examine Mr. Murphy on **the same topics that Mr. Brizzolara had questioned him about**. At this point, Mr. Brizzolara became obstructionist, cutting Ms. Pelletier off before she could finish her questions, making long speaking objections with no basis, effectively testifying for Mr. Murphy, and advising Mr. Murphy not to answer the City's questions. When this was not enough, Mr. Brizzolara stopped the deposition on the ground that Mr. Murphy needed to have his counsel present if Ms. Pelletier was going to ask him questions that might damage his credibility. Since it was Mr. Brizzolara who noticed the deposition and controlled the court reporter (and apparently Mr. Murphy), Ms. Pelletier was unable to proceed with the deposition. Plaintiff and Mr. Brizzolara should be subject to sanctions for Mr. Brizzolara's obstructionist behavior at the deposition, for his willful discontinuance of the deposition, and for his refusal to participate in good faith in the discovery process.

II. STATEMENT OF FACTS

A. MR. MURPHY GAVE TESTIMONY TO PLAINTIFF'S COUNSEL WHILE UNREPRESENTED BY COUNSEL

Plaintiff is employed as a Captain with the Burbank Police Department. [Complaint, ¶ 1.] According to his Complaint, as a result of Plaintiff's demands to his superiors to discipline

1 officers engaging in sexual harassment, discrimination and retaliation, certain officers conspired
2 "by making false accusations of unlawful conduct against him." [Complaint, ¶¶ 14-19.] During
3 the discovery process, Plaintiff's attorney Christopher Brizzolara took the deposition of former
4 Burbank Police Lieutenant Jon Murphy. Mr. Murphy admitted that he was a friend of Plaintiff's
5 and that he socialized with Plaintiff regularly. [Deposition of Lt. Jon Murphy taken on March 26,
6 2010 ("Murphy Depo."), at 77:17-25.]¹ The properly noticed deposition of Mr. Murphy
7 commenced on March 26, 2010 at 9:58 a.m. [Murphy Depo., at 1.] Mr. Murphy arrived at and
8 began the deposition unrepresented by counsel. Mr. Brizzolara commenced the deposition
9 undeterred by Mr. Murphy's lack of counsel and asked numerous questions of him, including a
10 litany of questions regarding conversations between Mr. Murphy and Plaintiff. Mr. Brizzolara's
11 examination covers 77 pages of Mr. Murphy's deposition transcript.

12 **B. PLAINTIFF'S COUNSEL THEN SOUGHT TO PREVENT CROSS-**
13 **EXAMINATION**

14 When Mr. Brizzolara completed his examination, counsel for the City attempted to cross
15 examine Mr. Murphy about his conversations with Plaintiff and the information he had allegedly
16 received from Plaintiff (*i.e.*, on the exact topics Mr. Brizzolara had questioned Mr. Murphy
17 about). In this regard, defense counsel sought to ask Mr. Murphy questions about testimony he
18 had given on this topic in a case entitled *Omar Rodriguez vs. Burbank Police Department*, Case
19 No. BC 414602. [Declaration of Kristin A. Pelletier ("Pelletier Decl.") ¶ 5.] Mr. Brizzolara
20 engaged in several tactics to prevent this line of questioning.²

21 First, Mr. Brizzolara attempted to interfere with the cross-examination by telling Ms.
22 Pelletier how to conduct her examination and contending that Ms. Pelletier could not ask Mr.
23 Murphy if he recalled giving certain testimony at a prior deposition. [Murphy Depo., at 100:14-
24 21.] Mr. Brizzolara cut Ms. Pelletier off many times before she could even ask her questions, and
25

26 ¹ A certified copy of the transcript of Mr. Murphy's deposition is lodged with the Court pursuant to *Code of Civil*
27 *Procedure* section 2025.480(d) and California Rule of Court 3.1116 and attached to the Declaration of Kristin
28 Pelletier in support of this motion.

² The relevant testimony is quoted in the separate statement filed concurrently herewith pursuant to Rule 3.1345 of
the California Rules of Court.

made long speaking objections with no legal basis which appeared to be solely designed to disrupt the deposition process and coach the witness. [See e.g. Murphy Depo., at 102:1-11.] After these exchanges (and after defense counsel advised Mr. Brizzolara that it was improper for him to interfere with her examination and try to mandate how she conducted it), he continued to interrupt counsel before she could even get her questions out. [Murphy Depo., at 102:17-19.]³

Mr. Brizzolara then decided to testify and explain for the witness. Some of Mr. Brizzolara's arguments did not even make sense. For example:

"Objection. Argumentative. That's not what – his testimony that he just read.

He said he couldn't recall whether or not he had heard that before. He didn't say he didn't recall hearing it. He said he didn't recall whether it was made."

[Murphy Depo., at 106:7-11.] "He says he couldn't recall whether or not he made it. . . . That's not to say he doesn't recall him making it. That would be different."

[Murphy Depo., at 106:21-25.]

When this appeared to be ineffective, Mr. Brizzolara suggested that Mr. Murphy needed to have his counsel present in order for the deposition to continue.

"At this point it seems to me, if that's what you're going to do, is take an adversarial approach to the City of Burbank's former lieutenant, that he should have his counsel here. . . ."

[Murphy Depo., at 108:11-14.]

Counsel for the City, Kristin Pelletier, attempted to point out that she was examining Mr. Murphy on the exact same subjects that had been covered on direct that very morning without Mr. Murphy's lawyer present. [Murphy Depo., at 109:6-15.] This did not deter Mr. Brizzolara, who took the position that there could be direct examination of the witness without his counsel present but no cross-examination that would "make [Mr. Murphy] seem not credible in parts of [his] testimony..." [Murphy Depo., at 110:7-16.]

³ Pelletier: "So do you recall . . ."

Brizzolara: "You don't have to refresh his recollection you have his testimony." [Id.]

1 C. PLAINTIFF'S COUNSEL THREATENS TO UNILATERALLY SUSPEND
2 THE DEPOSITION

3 Ms. Pelletier continued to attempt to depose Mr. Murphy, but Mr. Brizzolara then
4 suggested that the City "defer [its] questions" until the parties reconvened at a later date.
5 [Murphy Depo., at 111: 6-12.] When Ms. Pelletier would not agree to suspend questioning of Mr.
6 Murphy regarding his prior testimony, Mr. Brizzolara threatened to unilaterally suspend the
7 deposition.

8 "I'll just suspend this deposition.. I'll ask the court to clarify whether or not this
9 witness is entitled to an attorney when the City itself is cross-examining him
10 about inconsistent statements which could conceivably be used against him in
11 some other case in which he's actually a defendant. So if you want to do it that
12 way, then we'll do it the formal way. So I'm telling you that's what I'm going to
13 do."

14 [Murphy Depo., at 111:23-112:8.]

15 After stating that it appeared that Mr. Brizzolara was obstructing the deposition and that
16 she would have to make a motion, Ms. Pelletier once again attempted to continue with the
17 deposition. [Murphy Depo., at 111:11-22.] However, Mr. Brizzolara prevented the witness from
18 speaking by continuing to object that Mr. Murphy suddenly needed his lawyer present. [Murphy
19 Depo., at 111:23-112:16.] All the while, Mr. Brizzolara insisted that the deposition should be
20 suspended.

21 "I don't see the urgency here. We got to come back anyways. [sic]"

22 [Murphy Depo., at 114:24 – 115:1.]

23

24 "No. What I'm going to do is I'm going to suspend the deposition at this point
25 unless you have other questions besides these questions that you seek to use this
26 prior transcript."

27 [Murphy Depo., at 116:6-9.]

28 ///

1 Mr. Brizzolara admitted that he did not want Ms. Pelletier "pointing out that [Mr.
2 Murphy's] testimony is inconsistent. . ." [Murphy Depo. 116:24-117:1.] Ms. Pelletier argued
3 that it was not appropriate to demand a lawyer only upon cross-examination.

4 "[Mr. Murphy] showed up without a lawyer. He gave testimony on these points
5 without a lawyer. This has nothing to do with this [other] litigation and I'll bring
6 a motion."

7 [Murphy Depo., at 117:18-21.]

8 Mr. Brizzolara again testified for the deponent "You don't have to bring a motion because
9 he's not refusing to answer any questions. All he's requesting is that he have, which any
10 deponent can have, that he have his counsel present." [Murphy Depo., at 117:22-118:1.]

11 This last statement was telling because, up to this point, Mr. Murphy had NOT in fact
12 asked for his attorney to be present. Ms. Pelletier accordingly asked Mr. Murphy if he was
13 refusing to answer questions about his prior testimony in the *Rodriguez* case without his counsel
14 present, and Mr. Murphy said he would prefer to have his counsel present. [Murphy Depo., at
15 118:8-20.] Ms. Pelletier stated she would bring a motion, and Mr. Brizzolara responded by back-
16 pedaling on his prior position, stating "[T]here is no need for a motion to compel because nobody
17 is refusing to answer the question now." [Murphy Depo., at 120:12-14.] This was plainly not
18 true given his and the witness's prior statements and testimony.

19 More argument followed regarding the need for Mr. Murphy to have his lawyer present.
20 [Murphy Depo., at 120:15-123:21.] Seeing that Mr. Brizzolara and his witness were not going to
21 answer questions about the prior testimony, Ms. Pelletier moved on to other topics. [Murphy
22 Depo. 123:23-131:23.]

23 **D. PLAINTIFF'S COUNSEL UNILATERALLY STOPS THE DEPOSITION**

24 Eventually, Ms. Pelletier went back to the topic of conversations between Plaintiff and
25 Mr. Murphy. Mr. Brizzolara again responded that Mr. Murphy needed to have his lawyer present
26 and said he was going to contact Mr. Murphy's lawyer (Mr. Eugene Ramirez) to see if he was
27 available.⁴ (Murphy Depo. 133:21-24.) Ms. Pelletier stated:

28 ⁴ Mr. Ramirez is Mr. Murphy's lawyer in a federal case entitled *Angelo Dahlia v. City of Burbank et al.* [Pelletier

1 "All I want today is answers to questions about what Mr. Taylor told this witness
2 as testified to by this witness this morning. That's all I want and you have said
3 without his counsel present he's not going to answer those questions and you're
4 going to stop the deposition."

5 [Murphy Depo. 136:19-24.]

6 Mr. Brizzolara asked if Ms. Pelletier had questions on other topics and Ms. Pelletier said
7 that she did. [Murphy Depo., at 137:5-7.] However, Mr. Brizzolara then seemed to indicate that
8 Ms. Pelletier couldn't ask any additional questions because it would be impossible to separate
9 which questions related to which case. Thus, Mr. Brizzolara appeared to be taking the position
10 that Ms. Pelletier could not continue with any questioning until Mr. Murphy's counsel was
11 present. [Murphy Depo., at 137:8-9.]

12 Mr. Brizzolara then took a recess and called Mr. Murphy's counsel, Mr. Ramirez.
13 [Murphy Depo., at 138:6-7.] Mr. Brizzolara came back on the record to state that he had
14 contacted Mr. Ramirez and that Mr. Ramirez was in San Bernardino and could not be present that
15 day. He further stated that Mr. Ramirez had requested that Mr. Brizzolara stop the deposition so
16 that Mr. Ramirez could be present when the deposition continued. [Murphy Depo., at 138:9-18.]
17 Mr. Brizzolara unilaterally suspended the deposition stating, "I'm going to suspend the deposition
18 at this point." [Murphy Depo., at 138:18-19.] As noted above, it was Mr. Brizzolara, not Mr.
19 Murphy, who came up with the idea that Mr. Murphy could not testify without his lawyer present.
20 Moreover, it was only at the end of extensive argument—both on and off the record—during
21 which Mr. Brizzolara made clear that there was no way he was going to let Mr. Murphy answer
22 any questions about his prior testimony, that he decided to interject Mr. Ramirez into the mix and
23 use him as an excuse to halt the deposition. Mr. Brizzolara plainly did not want Mr. Murphy to
24 give any testimony that would undermine the favorable testimony he gave for Plaintiff earlier in
25 the day, and pulled out all the stops to prevent this from occurring.

26
27 Decl., ¶ 4.] The *Dahlia* case involves different claims than those at issue in the instant case and the City's counsel
28 was not attempting to question Mr. Murphy about that case when Mr. Brizzolara halted the deposition. Rather, as set
forth above, she was simply attempting to examine Mr. Murphy about the same conversations with Plaintiff that Mr.
Murphy had willingly and voluntarily testified about in response to questions posed by Plaintiff's counsel.

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1 E. **THE CITY ATTEMPTED TO MEET AND CONFER REGARDING THE**
2 **MATTER**

3 Ms. Pelletier attempted on numerous occasions to meet and confer with Plaintiff's counsel
4 both on the record and off the record at the deposition. [Pelletier Decl. ¶¶ 7, 8.] Ms. Pelletier
5 endeavored to keep Mr. Brizzolara from suspending the deposition or prohibiting her from asking
6 certain questions. However, Mr. Brizzolara insisted that Ms. Pelletier could not question the
7 witness about his prior testimony and ended up unilaterally stopping the deposition to prevent Ms.
8 Pelletier from taking such testimony.

9 Furthermore, after the deposition Ms. Pelletier sent correspondence to Plaintiff's counsel
10 in an effort to obviate the need to file this motion to compel. [Pelletier Decl. ¶ 8; Exhibit B.]
11 Both sets of Plaintiff's counsel responded to this correspondence, and Ms. Pelletier spoke to
12 Plaintiff's lead counsel Gregory Smith about the issue on April 23, 2010. [Id. Exhibit C.] These
13 discussions did not resolve the issue, as Plaintiff's counsel was not willing to agree to a remedy
14 that would redress Mr. Brizzolara's obstruction of the deposition. Plaintiff's counsel have had
15 their cake: they succeeded in preventing the City from cross-examining Mr. Murphy by
16 interfering in the deposition and filibustering so that defense counsel's questions could not be
17 asked, much less answered. Now they want to eat it too: their solution is to bring Mr. Murphy
18 back for deposition after they have had the opportunity to coach him as to what his answers
19 should be, thereby preserving the clear tactical advantage they obtained by obstructing the
20 deposition in the first place. That is not an effective or equitable remedy for Mr. Brizzolara's
21 behavior. The only equitable remedy for that behavior—and the only remedy that will deter these
22 type of tactics in the future—is to preclude Plaintiff from using the testimony elicited from Mr.
23 Murphy on March 26, 2010 and to require Plaintiff to pay the fees that the City incurred in
24 sending counsel to the aborted deposition.

25 ///

26 ///

27 ///

1 **III. ARGUMENT**

2 **A. THE COURT SHOULD IMPOSE SANCTIONS FOR PLAINTIFF'S**
3 **MISUSE OF THE DISCOVERY PROCESS.**

4 To prevent abuse of the deposition and discovery procedures, a court may impose
5 sanctions against a party who engages in conduct that is a misuse of the discovery process, if the
6 sanction is authorized by the section governing a particular method of discovery. C.C.P. §
7 2023.030. The *Code of Civil Procedure* defines sanctionable "misuse of the discovery process"
8 to include: (1) failing to submit to an authorized method of discovery; (2) making, without
9 substantial justification, an unmeritorious objection to discovery; and (3) making an evasive
10 response to discovery. C.C.P. § 2023.010 (d), (e) and (f). In *Carlson v. Superior Court* (1961) 56
11 Cal.2d 431, the Supreme Court, in passing on this language stated: "There is no question but that
12 the discovery statutes give to the trial court wide discretion in making such orders as may be
13 necessary to protect parties and deponents from abuse or misuse of depositions. The imposition
14 of sanctions is within the discretion of the trial court so long as the sanctions do not exceed those
15 which are required to protect the interests of the party adversely affected by the discovery abuse."
16 See, *A & M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 565.

17 In the present case, Plaintiff and his counsel have engaged in misuse of the discovery
18 process by preventing counsel for the City from cross-examining Mr. Murphy. Plaintiff's counsel
19 accomplished this by making long speaking objections with no basis, effectively testifying for
20 Mr. Murphy, advising Mr. Murphy not to answer the City's questions, and, ultimately, in
21 unilaterally suspending the deposition. C.C.P. § 2023.010 (d), (e), and (f).

22 As more specifically detailed in the factual summary set forth above, Mr. Brizzolara's
23 unilateral suspension of the deposition was improper and without justification. If any witness
24 gives testimony that is different from one occasion to another, that is a proper subject of cross-
25 examination. *Lawson v. Steinbeck*, (1919) 44 Cal.App.685, 689. Clearly it is permissible to
26 impeach a witness with inconsistent testimony given in earlier depositions. See, e.g., *Valley Vista*
27 *Land Co. v. Nipomo Water & Sewer Co.* (1968) 266 Cal. App. 2d 331, 337. Thus, the questions
28 Ms. Pelletier sought to have answered were proper. Moreover, as a third party witness, it is not

1 clear that Mr. Murphy had a right to have counsel present at the deposition in the first place. CCP
2 § 2025.420 (b)(12); *See also, Weil and Brown, Civil Procedure Before Trial*, §8:696-697 (stating
3 that only parties and their counsel have a right to attend a deposition). Furthermore, Mr. Murphy
4 submitted to the exact same line of questioning without his attorney being present (conversations
5 he had with Plaintiff), and only felt the sudden need to have counsel on cross-examination. This
6 was a clear tactical ploy designed to give Plaintiff an unfair advantage in this litigation.

7
8 **B. IT WAS IMPROPER FOR PLAINTIFF'S COUNSEL TO OBSTRUCT THE**
9 **DEPOSITION**

10 The permissible scope of examination at deposition is broad. Questions may relate to
11 "any matter, not privileged, that is relevant to the subject matter...if the matter either is itself
12 admissible in evidence or appears reasonably calculated to lead to the discovery of admissible
13 evidence." CCP § 2017.010; *Kalaba v. Gray* (2002) 95 Cal. App. 4th 1416, 1423 (deposition
14 questions proper if intended to elicit information reasonably calculated to lead to the discovery of
15 admissible evidence). As the court stated in *Stewart v. Colonial Western Agency, Inc.* (2001) 87
16 Cal. App. 4th 1006, 1013, "For discovery purposes, information is relevant if it might reasonably
17 assist a party in evaluating the case, preparing for trial, or facilitating settlement. Admissibility is
18 not the test and information, unless privileged, is discoverable if it might reasonably lead to
19 admissible evidence."

20 It is generally improper to instruct a witness not to answer questions on any grounds other
21 than attorney-client privilege. *See e.g., Stewart v. Colonial Western Agency, Inc.*, (2001) 87 Cal.
22 App. 4th 1006 (improper to instruct witness not to answer based on relevance grounds). Further,
23 the State Bar Attorney Guidelines of Civility and Professionalism, § 9a, require that attorneys not
24 direct deponents to refuse to answer questions without a proper legal basis for doing so. *See also,*
25 *Weil and Brown, Civil Procedure Before Trial*, § 8:734.2. The objections by Plaintiff's counsel
26 Mr. Brizzolara and his advisement to Mr. Murphy not to answer questions on grounds other than
27 privilege were improper.

28 ///

1 Furthermore, Local Rule 7.12 (e) 8-12 states that counsel defending a deposition should
2 limit objections to those that are well founded and necessary, should not coach the deponent or
3 suggest answers, and should not direct a deponent to refuse to answer questions unless they seek
4 privileged information or are manifestly irrelevant or calculated to harass. Here, as detailed
5 above, Mr. Brizzolara engaged in all of these prohibited tactics.

6 C. **IT WAS IMPROPER FOR PLAINTIFF TO UNILATERALLY SUSPEND**
7 **THE DEPOSITION.**

8 After these initial tactics proved unsuccessful, Mr. Brizzolara threatened to suspend and
9 eventually did unilaterally suspend Mr. Murphy's deposition. Once again, this is improper and a
10 misuse of the discovery process. The deposition officer may not suspend taking testimony except
11 by stipulation of all parties present, or so that a party can seek a protective order. C.C.P. §
12 2025.470. Furthermore, a motion for a protective order can only be sought in situations where the
13 examination is trying to obtain privileged material, being conducted in "bad faith," or in a manner
14 that "unreasonably annoys embarrasses or oppresses" the deponent or party seeking the protective
15 order. C.C.P. § 2025.470. At least one appellate court has strongly disapproved of the unilateral
16 termination of a deposition when the grounds were not the examiner's "bad faith." *See Waicis v.*
17 *Superior Court* (1990) 226 Cal.App.3d 283.

18 Here, Mr. Brizzolara's termination of Mr. Murphy's deposition was not done to obtain a
19 protective order. Furthermore, it would be hard for Mr. Brizzolara to argue that he was trying to
20 protect privileged information or that the deposition was being conducted in bad faith since he
21 himself scheduled the deposition and the questions being posed related to the very same topics he
22 himself had examined Mr. Murphy on earlier in the day. In fact, Mr. Brizzolara admitted that he
23 simply did not want the City's counsel asking questions that might damage Mr. Murphy's
24 credibility without Mr. Murphy's attorney being present.

25 D. **THE COURT SHOULD IMPOSE AN EVIDENCE SANCTION ON**
26 **PLAINTIFF**

27 The Court may impose an evidence sanction by issuing an order prohibiting a party from
28 introducing designated matters into evidence. C.C.P. § 2023.030(c); *Waicis v. Superior Court of*

1 *Marin County* (1990) 226 Cal.App.3d 283 (holding that it was not an abuse of discretion for the
2 trial court to disqualify an expert witness from testifying at trial when the court found the expert
3 had repeatedly been uncooperative in allowing his deposition to be taken). Furthermore, the court
4 may issue an evidence preclusion sanction even though the sanctioned party has not violated an
5 underlying discovery order. *See, Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Saltkin &*
6 *Berns* (1992) 7 Cal.App.4th 27. *See also, Vallbona v. Springer* (1996) 43 Cal.App.4th 1525; *Pate*
7 *v. Channel Lumber Co.* (1997) 51 Cal.App.4th 1447, 1455

8 As explained above, Plaintiff's counsel commenced Mr. Murphy's deposition and
9 questioned him at length regarding what Plaintiff had allegedly told Mr. Murphy about the
10 matters at issue in Plaintiff's lawsuit. However, once Mr. Brizzolara had obtained the record he
11 wanted, he prevented the City's counsel from cross-examining Mr. Murphy on the very same
12 subject. While there is really no way to rectify the unfairness and tactical advantage that Mr.
13 Brizzolara obtained for his client by his obstructionist conduct, the only conceivable remedy is to
14 minimize this advantage by precluding Plaintiff from utilizing Mr. Murphy's March 26, 2010
15 testimony in this case.

16 E. **THE COURT SHOULD ALSO IMPOSE MONETARY SANCTIONS**
17 **AGAINST PLAINTIFF AND HIS COUNSEL FOR MISUSE OF THE**
DISCOVERY PROCESS

18 *Code of Civil Procedure* § 2023.030 (a) provides that: "The court may impose a monetary
19 sanction ordering that one engaging in the misuse of the discovery process, or any attorney
20 advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by
21 anyone as a result of that conduct." *Id.* *See also, In re Marriage of Niklas* (1989) 211 C.A.3d 28,
22 38; *Green v. GTE Calif.* (1994) 29 C.A.4th 407, 410; *Cedars-Sinai Medical Center v. Superior*
23 *Court* (1998) 18 Cal.4th 1, 12. ("The power to impose discovery sanctions is a broad discretion
24 subject to reversal only for arbitrary, capricious, or whimsical action.) Here, Plaintiff's counsel's
25 unilateral termination of Mr. Murphy's deposition was a misuse of the discovery process. The
26 City went to the time and expense of preparing for and attending that deposition and then was
27 prohibiting from cross-examining the witness because of Mr. Brizzolara's actions. Plaintiff and
28 ///

1 Mr. Brizzolara should be sanctioned for the expense of having the attorney for the City prepare
2 for and attend a deposition in which she was prohibited from effectively participating.


3 The City has incurred \$991.25 in court reporter fees for the one-sided deposition of Mr.
4 Murphy. [Pelletier Decl. ¶ 9.] In addition, the City has also incurred in excess of \$2,950.00 in
5 attorneys' fees in preparing for and attending the aborted deposition, and in excess of \$2,950.00
6 in attorneys' fees in meeting and conferring with Mr. Brizzolara and preparing this motion. [Id.]
7 The City accordingly requests that the Court impose monetary sanctions against Plaintiff and Mr.
8 Brizzolara to compensate the City for these expenditures, which total \$6,891.

9
10 **IV. CONCLUSION**

11 Plaintiff and his counsel have deliberately obstructed discovery in an egregious manner.
12 The sanctions the City is requesting are not overly onerous, but are narrowly tailored "to protect
13 the interests of the party adversely affected by the discovery abuse." *A & M Records, Inc. v.*
14 *Heilman* (1977) 75 Cal.App.3d 554, 565. Plaintiff's counsel should not be able to memorialize
15 the testimony he prefers and stop a deposition when there might be testimony that does not suit
16 his purposes. Because of this, the City requests an order prohibiting Plaintiff or his counsel from
17 using the testimony elicited at Mr. Murphy's March 26, 2010, deposition and awarding sanctions
18 in the amount of \$6,891 to the City.

19
20 Dated: April 28, 2010

Burke, Williams & Sorensen, LLP

21
22 By: 
23 Kristin A. Pelletier
24 Attorneys for Defendant
25 City of Burbank
26
27
28

DECLARATION OF KRISTIN A. PELLETIER

I, Kristin A. Pelletier, declare as follows:

1. I make the following declaration based upon my personal knowledge, and if called as a witness, I could and would, testify competently hereto. I make this declaration in support of the City of Burbank's "Motion for an Order Imposing an Evidence Sanction Against Plaintiff William Taylor and for Monetary Sanctions of \$6,891 for Misuse of the Discovery Process Against Plaintiff and His Counsel Christopher Brizzolara" (the "Motion").

2. I am an attorney duly licensed and authorized to practice before all the courts of the State of California. I am a partner in the law firm of Burke, Williams, & Sorensen, LLP, attorneys for defendant the City of Burbank ("the City") in this action.

3. On or about March 26, 2010, I attended the deposition of Jon Murphy which took place at 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367. Mr. Murphy is not a party to this action and was not represented by counsel at the deposition.⁵ Pursuant to *Code of Civil Procedure* section 2025.480(d) and *California Rule of Court* 3.1116, a certified copy of the relevant portions of the 3/26/10 deposition transcript are attached hereto as Exhibit "A."

4. Christopher Brizzolara, counsel for Plaintiff William Taylor ("Plaintiff"), commenced the deposition and asked Mr. Murphy numerous questions about conversations he allegedly had with Plaintiff. No comment or objection was made concerning the fact that Mr. Murphy was not represented by counsel.

5. After Mr. Brizzolara concluded his examination, I attempted to cross-examine Mr. Murphy about his alleged conversations with Plaintiff (the same topic Mr. Brizzolara covered on direct) based in part on testimony he had given at a deposition which took place on January 8, 2010, in another case, *Omar Rodriguez vs. Burbank Police Department* (Case No. BC 414602). In response, Mr. Brizzolara made various unfounded objections, such as that I had no right to question Mr. Murphy regarding his recollection of his prior testimony.

///

⁵ Mr. Murphy is a defendant in a federal case entitled *Angelo Dahlia v. City of Burbank et al.*, which involves different claims than those at issue in the instant case.

6. Mr. Brizzolara's objections went on for some time, both on and off the record. It appeared to me that Mr. Brizzolara was trying to prevent me from effectively cross-examining Mr. Murphy and was coaching the witness. Mr. Brizzolara then stated that I could not continue to cross-examine Mr. Murphy unless he was represented by counsel and unilaterally stopped the deposition.

7. I attempted to meet and confer with Mr. Brizzolara on the spot during the deposition both on and off the record, but Mr. Brizzolara insisted that the deposition could not go forward.

8. On April 21, 2010, I once again attempted to meet and confer with Mr. Brizzolara by sending a letter that essentially requested the relief sought in the City's motion. A true and correct copy of my April 21, 2010, letter is attached hereto as Exhibit "B." I received written responses to that letter from Mr. Brizzolara and his co-counsel, Greg Smith, which are attached hereto as Exhibit "C." I also telephonically met and conferred with Mr. Smith on April 23, 2010, but we were unable to resolve our differences.

9. The City has incurred \$991.25 in court reporter fees for the deposition of Mr. Murphy. In addition, I spent in excess of 5 hours preparing for the deposition of Mr. Murphy and in excess of 5 hours driving to and/or attending the aborted deposition of Mr. Murphy. My firm has also spent in excess of 10 hours preparing this motion and meeting and conferring with Mr. Brizzolara and Mr. Smith to attempt to resolve this dispute. The City is billed at a blended rate of \$295 per hour for services rendered by attorneys in my firm. Thus, the City has incurred in excess of \$2,950.00 in attorneys' fees in preparing for and attending the aborted deposition of Mr. Murphy, and in excess of \$2,950.00 in attorneys' fees in meeting and conferring with Plaintiff's counsel and preparing this motion.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on April 28, 2010, at Los Angeles, California.

Kristin A. Pelletier
KRISTIN A. PELLETIER

UNLIMITED JURISDICTION
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,)
)
)
 Plaintiff,)
)
 vs.) Case No.
) BC422252
 CITY OF BURBANK, ET AL.,)
)
 Defendants.)
 _____)

DEPOSITION OF JON MURPHY

Date & Time: Friday, March 26, 2010
9:58 a.m. - 1:20 p.m.

Location: 6300 Canoga Avenue
Suite 1590
Woodland Hills, California

Reporter: Ariela Pastel, CSR
Certificate No. 13167



1 Deposition of JON MURPHY, taken
2 before Ariela Pastel, CSR, a Certified Shorthand
3 Reporter for the State of California, commencing on
4 Friday, March 26, 2010, at 9:58 a.m., at 6300 Canoga
5 Avenue, Suite 1590, Woodland Hills, California.
6

7 APPEARANCES:

8 For the Plaintiff:

9 LAW OFFICES OF GREGORY SMITH
10 BY: CHRIS BRIZZOLARA, ESQ.
11 GREGORY SMITH, ESQ.
12 6300 Canoga Avenue
13 Suite 1590
14 Woodland Hills, California 91367
15 818-712-4000

16 For the Defendant City of Burbank:

17 BURKE WILLIAMS & SORENSEN LLP
18 BY: KRISTIN PELLETIER, ESQ.
19 444 South Flower Street
20 Suite 2400
21 Los Angeles, California 90071
22 213-236-0600

23 ALSO PRESENT:

24 BILL TAYLOR
25 TIM STEHR

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I N D E X

EXAMINATION BY:	AGE
MR. BRIZZOLARA	4
MS. PELLETIER	77

E X H I B I T S

(None)

1 Q I'm going to ask you. Your deposition was
2 taken on January 8, 2010, in the case of Omar Rodriguez
3 versus the City of Burbank and the Burbank Police
4 Department; correct?

5 A Yes, ma'am.

6 Q Did you testify honestly during that
7 deposition?

8 A Yes, ma'am.

9 Q Did you give truthful statements?

10 A Yes, ma'am.

11 Q And your testimony was given under penalty of
12 perjury?

13 A Yes, ma'am.

14 Q You testified during that prior proceeding,
15 did you not, that you don't recall Mr. Taylor ever
16 saying that he believed that there was a problem with
17 racism at the Burbank Police Department?

18 MR. BRIZZOLARA: Objection. We'd have
19 to actually -- you'd have to cite him the page and
20 line. Then we can actually see what he says. Whatever
21 he says he says.

22 MS. PELLETIER: Right. Well, I'm asking him
23 what he recalls what he testified to. I can refresh
24 his recollection if he -- and I will do that if he
25 doesn't --

1 THE WITNESS: May I -- what section is that?

2 BY MS. PELLETIER:

3 Q Well, I'm asking you first before you look at
4 it, do you recall testifying that you didn't recall
5 Mr. Taylor ever saying that he believed there was a
6 problem with racism at the Burbank Police Department?

7 MR. BRIZZOLARA: Objection. Vague and
8 ambiguous.

9 I'd just advise that she's welcome to cite you
10 the specific portions of your --

11 MS. PELLETIER: I'd appreciate it. I didn't
12 interrupt your leading, you know, questioning of this
13 witness. I don't think you have the ability to
14 instruct the witness, and I don't think that you should
15 be interfering in my questioning. You've stated your
16 objections. You shouldn't be giving him instructions.

17 BY MS. PELLETIER:

18 Q My question is simple. Did you testify that
19 you didn't recall --

20 MR. BRIZZOLARA: Slow down.

21 BY MS. PELLETIER:

22 Q -- that you did not recall Mr. Taylor ever
23 saying that there was a problem with racism in the
24 Burbank Police Department when you gave sworn testimony
25 two months ago?

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1 MR. BRIZZOLARA: Let me just object. I don't
2 think it's appropriate to take an argumentative tone
3 with the witness or with me. The witness clearly has
4 the right to be cited to whatever you're referring to
5 in this transcript, and I don't have to instruct him on
6 anything. I'm an officer of the court, and I can
7 advise him that he has that right. He's a deponent
8 that's appearing here by subpoena. If you want to ask
9 him specifically -- specific testimony to his
10 deposition, just give him the page and line. How
11 difficult is that?

12 MS. PELLETIER: Well, because I'm going to do
13 it the way that it's always done, which -- and I'm
14 going to see if he has a recollection, and if he
15 doesn't, then I'm going to refresh it.

16 BY MS. PELLETIER:

17 Q So do you recall --

18 MR. BRIZZOLARA: You don't have to refresh his
19 recollection. You have his testimony.

20 BY MS. PELLETIER:

21 Q Right. But my question is -- my question is
22 this: Do you recall testifying on January 8, 2010,
23 that Mr. Taylor -- that you had no recall of Mr. Taylor
24 reporting to you that there was a problem with racism
25 in the Burbank Police Department? Yes or no, do you

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1 remember that?

2 MR. BRIZZOLARA: Same objections. And again,
3 I don't think you need to take a hostile tone. The
4 witness has been very cooperative. You just need to
5 show him his testimony, he can say whether that was his
6 testimony.

7 MS. PELLETIER: No. I'm asking if he
8 remembers giving that testimony.

9 BY MS. PELLETIER:

10 Q Yes or no?

11 MR. BRIZZOLARA: Same objections. I don't
12 really think that's the proper way to do it here,
13 but --

14 THE WITNESS: About discrimination that -- no,
15 I don't recall.

16 BY MS. PELLETIER:

17 Q You don't recall testifying that --

18 MR. BRIZZOLARA: He said he doesn't recall
19 what -- you asked him whether or not he testified. He
20 said he doesn't recall.

21 MS. PELLETIER: Please don't interfere with my
22 line of questioning of this witness. If you have an
23 objection, you --

24 MR. BRIZZOLARA: I've objected. The way
25 you're doing it is improper. All you can tell to ask

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1 him is does he recall whether or not he said that. If
2 he says he doesn't recall, then you can reassess it.

3 MS. PELLETIER: That's what I asked him, and
4 now -- that's what I'm trying to get an answer to.

5 BY MS. PELLETIER:

6 Q Do you recall --

7 A No, I don't.

8 Q You don't recall whether or not you testified
9 that Mr. Taylor did -- that you had no recall of
10 Mr. Taylor ever complaining to you that he believed
11 there was a problem with racism in the Burbank Police
12 Department?

13 MR. BRIZZOLARA: Objection. Asked and
14 answered. He just said that. So do you want to read
15 his testimony now, or do we have to keep asking the
16 question?

17 BY MS. PELLETIER:

18 Q Do you recall giving that testimony?

19 MR. BRIZZOLARA: He just said he didn't recall
20 one way or the other.

21 BY MS. PELLETIER:

22 Q Is that your testimony? Not what Mr.
23 Brizzolara --

24 A No, no, I'm with you. I understand. What
25 section is it in here?

1 Q What I'm asking you first -- and this is the
2 problem I'm having. I just want a simple yes or no.
3 Do you recall testifying -- and I'll show it to you
4 once you answer my question. Do you recall testifying
5 that you did not recall Bill Taylor ever complaining to
6 you --

7 A It's possible I may have said that.

8 Q Do you recall whether you said it or not?

9 A No, I don't recall the specifics.

10 Q Thank you. Please turn to Page 103 in the
11 transcript in front of you.

12 A One --

13 Q Yeah, there are -- and you'll have to -- it's
14 a mini. Okay. And why don't you read lines 10 through
15 17.

16 A "Did Bill Taylor ever complain to you --"

17 Q No, you can read it to yourself or if you want
18 to --

19 MR. BRIZZOLARA: You can read it. Read it out
20 loud.

21 THE WITNESS: -- "in sum or substance that he
22 believed that there was a problem with racism in the
23 department?"

24 "I don't recall. I don't know specifically
25 Bill Taylor made that statement. Can't recall."

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1 BY MS. PELLETIER:

2 Q So you testified, did you not, on January 8,
3 2010, that you couldn't recall Bill Taylor ever
4 complaining to you in sum or substance that he believed
5 there was a problem with racism in the Burbank Police
6 Department; correct?

7 MR. BRIZZOLARA: Objection. Argumentative.
8 That's not what -- his testimony that he just read. He
9 said he couldn't recall whether or not he had heard
10 that before. He didn't say he didn't recall hearing
11 it. He said he didn't recall whether it was made.

12 MS. PELLETIER: Well, I think the testimony
13 speaks for itself.

14 BY MS. PELLETIER:

15 Q The question is, "Did Bill Taylor ever
16 complain to you in sum or substance that he believed
17 that there was a problem with racism in the
18 department?"

19 And the answer is, "I don't know specifically
20 that Bill Taylor made that statement. I can't recall."

21 MR. BRIZZOLARA: He says he couldn't recall
22 whether or not he made it.

23 MS. PELLETIER: Right.

24 MR. BRIZZOLARA: That's not to say he doesn't
25 recall him making it. That would be a different

1 testimony.

2 MS. PELLETIER: That's not true..

3 MR. BRIZZOLARA: That is true. That's why
4 they should have clarified right there when he made
5 that statement whether he was saying he didn't recall
6 whether the statement was made or he didn't recall him
7 making the statement.

8 BY MS. PELLETIER:

9 Q You testified on January 10th --

10 MS. PELLETIER: I think it's improper for you
11 to be coaching --

12 THE WITNESS: No, this is the problem. See, I
13 understood that this is a deposition.

14 MR. BRIZZOLARA: Yeah, let me just --

15 THE WITNESS: This is cross-examination. This
16 is where the frustration comes in from my position.

17 MR. BRIZZOLARA: Let me stop. Let me just
18 stop right here, because the fact that -- is this the
19 deposition -- what case is this from?

20 THE WITNESS: This is from Lieutenant
21 Rodriguez's case.

22 MR. BRIZZOLARA: And so that's the deposition
23 being taken by Burbank in a different --

24 MS. PELLETIER: No. It's a deposition being
25 taken by Mr. Gressen in a different case. And he's

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1 given prior statements that are inconsistent with his
2 testimony here today, and I'm entitled to cross-examine
3 him on those statements, and I'm going to cross-examine
4 him on those statements.

5 MR. BRIZZOLARA: I'd just ask that you -- it
6 would be quicker if you would just read the testimony,
7 and that would --

8 MS. PELLETIER: I'm going to do this my way.
9 I'm not going to do it your way. And I'd appreciate it
10 if you don't interfere in my examination.

11 MR. BRIZZOLARA: At this point it seems to me,
12 if that's what you're going to do, is take an
13 adversarial approach to the City of Burbank's former
14 lieutenant, that he should have his counsel here,
15 because I don't think --

16 MS. PELLETIER: No. He --

17 MR. BRIZZOLARA: Well, because -- yes, because
18 now you're raising questions about -- potentially about
19 his credibility, about his testimony on these matters
20 that involve Lieutenant Rodriguez that apparently would
21 involve this other detective that's filed a lawsuit,
22 which obviously involves allegations regarding
23 Lieutenant Rodriguez, and it seems to me that we need
24 to have Mr. Ramirez here to appropriately respond to
25 that because, as you point out, I can't instruct him

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1 not to answer the question.

2 MS. PELLETIER: Well, you're doing your best
3 to interfere. Let me just tell you --

4 MR. BRIZZOLARA: I'm not doing my best to
5 interfere. I'm trying to --

6 MS. PELLETIER: He came here today, and I'm
7 only asking him about Mr. Taylor. He gave this
8 testimony in Mr. Rodriguez's lawsuit specifically about
9 Mr. Taylor. He's given testimony here today, and I am
10 entitled to refresh his recollection to compare that
11 past testimony. It has nothing to do with the Dalia
12 litigation. I've agreed not to ask questions about
13 that, but I'm asking him the same questions that you
14 asked him here today without his counsel present, and
15 that is appropriate cross-examination.

16 BY MS. PELLETIER:

17 Q So let me ask you --

18 MR. BRIZZOLARA: Hold on. I'm going to stop
19 for a second, because I assured Mr. Ramirez that if
20 matters came up that would potentially affect his
21 representation of this deponent, that other case, that
22 we would have him present.

23 MS. PELLETIER: Well, you asked the same
24 questions. So why is it okay for you to ask him these
25 very same questions, and then I cannot cross-examine

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1 him on prior statements that he gave about Mr. Taylor?
2 I will not mention Dalia or the litigation. This is
3 solely about what Mr. Taylor told him about racism in
4 the department. That's the subject of my questioning,
5 what Mr. Taylor told him about racism in the
6 department, nothing else.

7 MR. BRIZZOLARA: I'll tell you specifically
8 why, because I don't represent the City of Burbank, and
9 I'm not here on behalf of the City of Burbank trying to
10 cross-examine one of my former employees to try to make
11 them seem not credible in parts of their testimony, so
12 that's the difference between you and I. So I don't
13 think it's fair -- if you want to do this, the witness
14 has a right to be represented at his deposition, and
15 that attorney actually wants to be present if you're
16 going to go into questions like this.

17 MS. PELLETIER: The questions are fair game
18 based on this lawsuit.

19 MR. BRIZZOLARA: They may or may not be. I
20 don't know. But I'm just saying that he has a right to
21 have counsel present, and I'm going to ask you to
22 extend the deponent that courtesy that he have
23 Mr. Ramirez present if you're going to try to
24 cross-examine him about allegedly inconsistent
25 statements from some other case, so --

1 MS. PELLETIER: And if -- I'm going to ask the
2 witness my questions. If the witness walks out, then
3 the witness can walk out.

4 BY MS. PELLETIER:

5 Q Now, let me just ask you --

6 MR. BRIZZOLARA: Well, he doesn't want to walk
7 out. We're going to have to reconvene this deposition
8 anyway. Why can't you defer your questions until we do
9 that? Then we'll have -- now that I understand the
10 City's tactic on this case, then I certainly will have
11 Mr. Ramirez present to protect the witness's interest
12 in this case, so --

13 MS. PELLETIER: I'm not going to agree on this
14 line of questioning solely what Mr. Taylor told this
15 witness to stop my questioning. Based upon what you
16 asked him, I think it's fair game.

17 MR. BRIZZOLARA: You're not agreeing to let
18 him have an attorney?

19 MS. PELLETIER: I'm not going to agree not to
20 ask him about this specific line of questioning and
21 wait for an attorney, because I think the door has been
22 opened and he testified about it.

23 MR. BRIZZOLARA: I disagreed with you. And
24 you know what I'm going to do, if that's your position,
25 then if you continue to ask those questions, I'll just

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1 suspend this deposition. I'll ask the court to clarify
2 whether or not this witness is entitled to an attorney
3 when the City itself is cross examining him about
4 inconsistent statements which could conceivably be used
5 against him in some other case in which he's actually a
6 defendant. So if you want to do it that way, then
7 we'll do it the formal way. So I'm telling you that's
8 what I'm going to do.

9 MS. PELLETIER: Well, I think you can do that.

10 MR. BRIZZOLARA: I can.

11 MS. PELLETIER: I think that I'll bring a
12 motion to compel, and I think that it's clear that
13 what's going on here is that there's desire to obstruct
14 the deposition so that the witness can't be
15 cross-examined on testimony he gave this morning. So
16 let me just --

17 BY MS. PELLETIER:

18 Q Let me just ask you this. Do you recall
19 testifying that Mr. Taylor never told you -- or that
20 you didn't recall Mr. Taylor ever telling you that
21 minorities had been singled out for termination based
22 on their race?

23 MR. BRIZZOLARA: All right. I'm going to
24 assert the same objections.

25 MS. PELLETIER: I'm just asking if he recalls

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1 giving that testimony.

2 MR. BRIZZOLARA: But, you know, you're really
3 not asking him that. What you're trying to do is set
4 up some type of allegedly inconsistent statement, which
5 the witness is entitled to have his own attorney here
6 present to respond to those type of questions, because
7 I'm not --

8 MS. PELLETIER: I don't agree.

9 MR. BRIZZOLARA: Well, I don't see how you
10 could possibly disagree that the deponent is entitled
11 to legal representation when you are trying to impeach
12 him.

13 MS. PELLETIER: I'm just trying to ask about
14 the testimony he gave two months ago and have him tell
15 me whether he gave that testimony and whether he -- you
16 know, there was any reason why he couldn't give his --

17 MR. BRIZZOLARA: Tell me why he's not entitled
18 to have an attorney here.

19 MS. PELLETIER: Because of the fact he gave
20 this -- this has nothing to do with litigation
21 involving Mr. Dalia where he's a named defendant. He
22 gave this testimony two and a half months ago without
23 an attorney present. He answered these very same
24 questions when posed by Mr. Gressen without an attorney
25 present.

1 THE WITNESS: No, that's not true. The City
2 was representing me.

3 MR. BRIZZOLARA: Correct.

4 MS. PELLETIER: And the city is represented
5 here. He gave --

6 THE WITNESS: No, no.

7 MR. BRIZZOLARA: So the city -- let me just --
8 so now I'm really understanding this. So at a time
9 when the city represents -- was that Ms. Savit
10 (phonetic) Miller of -- or Ms. Hervitz (phonetic) or
11 one of them?

12 MS. PELLETIER: I don't think she was
13 representing him. She was present.

14 THE WITNESS: Yes, she was.

15 MR. BRIZZOLARA: Yes, she was. She was
16 representing him as a -- because as a he's former
17 employee of the city.

18 THE WITNESS: Yes.

19 MR. BRIZZOLARA: So the fact that he might
20 give some testimony when he's being represented by the
21 city's counsel is certainly different than when he's
22 going to be represented by his own attorney in a case
23 in which he's a defendant, so I don't really see
24 that -- I don't understand -- first of all, I don't
25 understand the urgency here. We got to come back

1 anyways. Secondly, he's entitled to an attorney. He's
2 a deponent. I don't understand why you would quarrel
3 with that. And your questions -- if you have questions
4 to ask him about his testimony, you're free to do that
5 once he has his counsel here, if they're proper.

6 MS. PELLETIER: Well, and I will -- again,
7 none of this has anything to do with the lawsuit where
8 he's got counsel and been named as a defendant. If
9 you're suggesting that the witness would change his
10 testimony based upon who his attorney is, I think that
11 that is an admission that the witness has given, but
12 set that aside --

13 MR. BRIZZOLARA: I'm not suggesting anything.
14 I'm suggesting that the attorney for the city would not
15 have the same motivation to object to the form of
16 questions and to object to a manner of questioning that
17 his attorney is going to have, so that's all I'm
18 suggesting. And I don't see any reason why -- I don't
19 see the urgency, again, of why this has to happen now,
20 particularly when we're going to have to come back
21 anyways.

22 MS. PELLETIER: Because I want to question him
23 now based on the testimony he gave this morning without
24 having anybody influence his testimony as to his best
25 recollection about these specific issues he testified

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1 about. I don't think that I have to wait. I think I'm
2 going to ask the questions. If he refuses to answer
3 them, I'm going to bring a motion to compel. So why
4 don't we get on with it. Your objection is noted for
5 the record.

6 MR. BRIZZOLARA: No. What I'm going to do is
7 I'm going to suspend the deposition at this point
8 unless you have other questions besides these questions
9 that you seek to use this prior transcript. If you
10 have other questions, you can ask them. Otherwise, I'm
11 going to suspend it and ask the court that the depo be
12 reconvened at a time after we have a further
13 clarification of Pitchess issues, after we have
14 clarification regarding this witness's right to have
15 his personal attorney present at this deposition. So
16 that's what I'll do. So I'd encourage you to ask
17 whatever else you have that might be important to you
18 at this point, because I don't think it's fair. And
19 particularly since I think there is the prospect that
20 his testimony could be used from this case in the case
21 in which he's a defendant.

22 MS. PELLETIER: About what Mr. Taylor
23 supposedly told him or didn't tell him?

24 MR. BRIZZOLARA: No, about -- what you're
25 trying to do is point out that his testimony is

1 inconsistent or that there are -- so what you're trying
2 to do is attack his credibility. Obviously, the
3 plaintiff's attorney in the case in which that
4 detective is suing the City of Burbank might want to
5 use that testimony in his case. I don't think that
6 takes a quantum leap of logic to figure that out.

7 MS. PELLETIER: I think where the testimony
8 is -- where I'm trying to question him is specifically
9 about what Mr. Taylor said to him. I don't think that
10 has any bearing on the Dalia litigation and whether
11 people were threatening and intimidating Dalia.

12 I think this is clearly designed, and I'm --
13 you know, I can't make your court reporter stay here
14 who is typing diligently, but I think this is clearly
15 designed to give the witness an opportunity to try to
16 get his story straight. I don't think there's going to
17 be any mystery to the court about what's going on here.
18 And I think this is proper. He showed up without a
19 lawyer. He gave testimony on these points without a
20 lawyer. This has nothing to do with this litigation,
21 and I'll bring a motion.

22 MR. BRIZZOLARA: You don't have to bring a
23 motion because he's not refusing to answer any
24 questions. All he's requesting is that he have, which
25 any deponent can have, that he have his counsel

1 present.

2 MS. PELLETIER: No. He -- you are stopping a
3 deposition, so I will bring that motion, because you're
4 refusing to allow me to ask my questions. The
5 witness -- you're not even letting the witness --
6 let's just ask the witness.

7 BY MS. PELLETIER:

8 Q Are you refusing to answer my questions about
9 your prior testimony in the Rodriguez matter without
10 your counsel present?

11 A From the discussion I've just heard from the
12 two of you, it would be -- behoove me to do that.

13 Q Well, that's not -- you're going to take
14 Mr. Brizzolara's instruction that you --

15 A Well, no, because what happened was that on
16 the lawsuit, originally the City represented me. And
17 then in this particular one, I'm just treated as a
18 witness, so it was confusing to me as to the -- so I'd
19 like the wisdom as to making the right decision as to
20 who should represent me or who should --

21 Q Did your confusion over representation cause
22 you to give false testimony in the Rodriguez matter?

23 MR. BRIZZOLARA: These are the type of
24 argumentative questions that we really want to try to
25 avoid, and I do think he has to have his counsel

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1 present. When you make statements like he needs to get
2 his story straight or the statement that you just made,
3 you know, I really find that offensive, because this is
4 a gentleman that worked for your department for 29
5 years. He's being dragged unwillingly into two other
6 lawsuits to give testimony to the best of his
7 recollection, and then to be attacked by the city like
8 that, I really don't think it's proper, and that's the
9 exact reason why I think he should have his own counsel
10 here.

11 MS. PELLETIER: And I will -- if a witness,
12 any witness, gives testimony that is different on one
13 occasion than another, that's a proper subject of
14 cross-examination. I didn't illicit the testimony from
15 him this morning that you did. And, you know, I
16 will -- I think that we've talked about this long
17 enough. I will bring a motion. I understand you're
18 halting the deposition.

19 MR. BRIZZOLARA: Well, I'm not. I'm
20 encouraging you to ask questions that don't require the
21 presence of an attorney so we can get as much as we can
22 done, if possible.

23 MS. PELLETIER: I desire to ask questions on
24 the witness's prior testimony on the very narrow topic
25 of Mr. Taylor's statements to him. There aren't very

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1 many of them, and what you're telling me is you're
2 going to tell your court reporter to pack up and go
3 home if I ask those questions.

4 MR. BRIZZOLARA: No. I think we both, myself
5 and the witness, have told you that we think his
6 counsel should be present. That's what we've said.

7 MS. PELLETIER: And you've told me -- and it's
8 on the record, so -- that you're going to halt the
9 deposition. And he's told me he's not going to answer
10 my questions, so I just want to make sure we're clear
11 for the motion to compel.

12 MR. BRIZZOLARA: Well, there is no need for a
13 motion to compel because nobody is refusing to answer
14 the question now.

15 MS. PELLETIER: Yes, he's refusing to answer
16 my questions. So let me ask him and let him --

17 MR. BRIZZOLARA: He needs his attorney
18 present. I really can't fathom how you could possibly
19 believe it's fair that you could ask these questions
20 and him not exercise his right to have an attorney
21 present.

22 MS. PELLETIER: Because you did, and he was
23 fine with the answer.

24 MR. BRIZZOLARA: No, but I'm not attacking --

25 THE WITNESS: No, that's not true. What

1 happened was I went to my attorney, and then there was
2 conversations both with the city attorney's office and
3 with this office.

4 MR. BRIZZOLARA: Correct.

5 THE WITNESS: For this concern happening right
6 now.

7 MR. BRIZZOLARA: That's true. We tried -- we
8 hoped to avoid this, but obviously that's not going to
9 be the case, so we'll get Mr. Ramirez involved.

10 MS. PELLETIER: You hoped to avoid him being
11 examined on prior testimony?

12 MR. BRIZZOLARA: We hoped to avoid him having
13 to spend money out of his pocket to pay for an attorney
14 that the City is refusing to provide him for this
15 deposition. That's what we hoped to avoid. The City
16 itself refused to pay Mr. Ramirez to appear at this
17 deposition and represent the witness. That's what
18 we're talking about. So the City picks and chooses
19 when it provides representation. When it's in the
20 City's interest to provide representation, it will pay
21 for it. When it's not, it won't. That's as simple as
22 I can make it.

23 MS. PELLETIER: And that's not true. The
24 reason why --

25 MR. BRIZZOLARA: It's absolutely true.

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1 MS. PELLETIER: No. Mr. Murphy is here solely
2 as a witness. There's no reason -- and I am
3 representing the city.

4 MR. BRIZZOLARA: He was solely as a witness in
5 this case.

6 MS. PELLETIER: Right. And he showed up
7 without a lawyer.

8 MR. BRIZZOLARA: We have a lawyer. The City
9 is representing --

10 HE WITNESS: No, the City is representing me,
11 ma'am.

12 BY MS. PELLETIER:

13 Q Let me -- I --

14 MR. BRIZZOLARA: But since the City apparently
15 wants to force this retired individual to pay an
16 attorney to be here, then we'll do that.

17 MS. PELLETIER: I'm not trying to force him.
18 I'm just trying to ask questions. You're the one
19 insisting that he get a lawyer. I'm just trying to ask
20 him questions --

21 MR. BRIZZOLARA: I'm not insisting he get a
22 lawyer. I'm stating it appears that's what we have to
23 do here.

24 MS. PELLETIER: Well, I'm the one trying to
25 ask questions with -- just go forward the way we are,

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1 so I'm not trying to subject Mr. Murphy to any burdens.
2 I think that I'm simply trying to understand the
3 testimony he gave two months ago and compare it to the
4 testimony he gave you this morning.

5 MR. BRIZZOLARA: Well, that doesn't seem to be
6 a very hard task. You have his testimony from before.
7 You have his testimony from --

8 MS. PELLETIER: Right. And I'm allowed to ask
9 him about those --

10 MR. BRIZZOLARA: You may be. I'm not
11 disputing that you may be at some point, but I don't
12 think right now is the appropriate point when he's
13 unrepresented.

14 MS. PELLETIER: And unprepared?

15 MR. BRIZZOLARA: Not unprepared. He has his
16 deposition transcript.

17 BY MS. PELLETIER:

18 Q Let me ask you --

19 MS. PELLETIER: And obviously, mark the
20 transcript. There's going to be a law in motion
21 practice on this.

22 BY MS. PELLETIER:

23 Q -- you attended a meeting at Jose Duran's
24 girlfriend's house on April 10, 2009; correct, Good
25 Friday?

1 A I believe I did, yes.

2 Q And Omar Rodriguez was present at that
3 meeting?

4 A Yes, ma'am.

5 Q And Bill Taylor was present at that meeting?

6 A No, ma'am.

7 Q Sorry. You're right. Jose Duran was present
8 at that meeting?

9 A Yes, ma'am.

10 Q And Neil Gunn was present at that meeting?

11 A Yes, ma'am.

12 Q By the way, you -- before I go there. And in
13 the week prior to that meeting, there were numerous
14 telephone conversations between you and Omar Rodriguez;
15 correct?

16 MR. BRIZZOLARA: Objection. Vague and
17 ambiguous.

18 THE WITNESS: I don't recall. I definitely
19 talked to Rodriguez, but I don't remember.

20 BY MS. PELLETIER:

21 Q And Lieutenant Rodriguez told you that prior
22 to -- during those phone calls -- while he's away at
23 command college; right?

24 A Yes, ma'am.

25 Q And he tells you during these phone calls

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1 prior to that meeting that he had been calling Chief
2 Stehr without getting a return phone call?

3 A Omar Rodriguez?

4 Q Uh-huh.

5 A No, I recall -- well, no, I don't recall.

6 Q Do you recall Omar Rodriguez telling you that
7 Chief Stehr was walking around the station and asking
8 about Omar?

9 A No, I don't recall that.

10 Q Do you recall Omar Rodriguez telling you that
11 he was worried that something bad was going to happen
12 to him?

13 A That Omar said something bad was going to
14 happen? No, ma'am.

15 Q Do you recall that prior to that meeting on
16 April 10th that what Omar was concerned about was the
17 Portos Bakery investigation being reopened?

18 MR. BRIZZOLARA: Objection. Calls for
19 speculation. Lacks foundation.

20 THE WITNESS: No, I wasn't aware of that.

21 BY MS. PELLETIER:

22 Q Pardon me?

23 A I wasn't aware.

24 Q You don't recall that? It sounds like you --

25 A About the Portos investigation being reopen?

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1 Q Right. That that's what Omar was -- one of
2 the things Omar was concerned about was that Stehr was
3 walking around the station asking about him, and he was
4 worried something bad was going to happen to him.

5 A I don't recall that.

6 Q Do you recall Omar telling you? That was the
7 question.

8 A No, I don't recall that.

9 Q Do you recall Omar being -- advising you that
10 the Portos Bakery investigation was going to be
11 reopened?

12 A No, I don't recall specifics.

13 Q Do you recall discussing at the April 10th
14 meeting at Jose Duran's girlfriend's house the concerns
15 about the Portos Bakery investigation being reopened?

16 A I don't recall the specifics.

17 Q Do you recall there being concern not just
18 about Mr. Taylor that you expressed, but also being
19 concerned about Mr. Rodriguez and the Portos Bakery
20 matter?

21 MR. BRIZZOLARA: Objection. Vague and
22 ambiguous.

23 Can we have the question read back.

24 (The previous question
25 was read as follows:

1 "QUESTION: Do you recall there being concern
2 not just about Mr. Taylor that you expressed,
3 but also being concerned about Mr. Rodriguez
4 and the Portos Bakery matter?")

5 MR. BRIZZOLARA: Objection. Vague and
6 ambiguous. Unintelligible. I don't understand the
7 question. By who? Concern by who?

8 THE WITNESS: I don't recall.

9 BY MS. PELLETIER:

10 Q You testified about concerns about Mr. Taylor
11 being thrown under the bus.

12 Do you recall that testimony?

13 A Yes, ma'am.

14 Q Who expressed those concerns?

15 A I want to say I think it was Sergeant Duran
16 that made that comment. I don't -- I believe it was
17 Sergeant Duran.

18 Q And so the expressions that Mr. Taylor might
19 be thrown under the bus were being made by Sergeant
20 Duran or one of the other participants in this
21 April 10th meeting --

22 A And I don't recall if that was said at the
23 meeting. I know that term has been used, but I don't
24 recall if it was specifically said at that meeting.

25 Q But it was used by the folks who had concerns

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1 about what was happening to Mr. Taylor; right?

2 A I want to say Duran.

3 Q Wasn't being used by Chief Stehr?

4 A I did not hear him make that statement.

5 Q And basically, what was going on at the
6 meeting was that folks had gathered because there were
7 concerns, and what Sergeant Duran said was that the
8 concern was that Mr. Taylor might get thrown under the
9 bus?

10 A That's -- yeah, to the best of my
11 recollection.

12 Q Thrown under the bus for what?

13 A I don't know what the full specifics as to
14 being thrown under the bus was. I don't recall.

15 Q You don't recall what you guys talked about as
16 to why Mr. Taylor might be thrown under the bus?

17 A I can't be specific. I don't remember the
18 specifics to that. There was that concern. I don't
19 know if that comment was made, but it was made. I want
20 to say I do recall that comment being made. I recall
21 that Omar wanted to go talk to Chief Stehr, but I don't
22 recall specific specifics.

23 Q You don't recall a discussion of, for example,
24 what Mr. Taylor did to cause anyone to want to throw
25 him under the bus; correct?

1 A No. No.

2 Q And wasn't the claim that was being made was
3 that Mr. Taylor had protected Omar Rodriguez in the
4 Portos investigation?

5 MR. BRIZZOLARA: Objection. Claimed by who?
6 It's vague and ambiguous. Unintelligible.

7 BY MS. PELLETIER:

8 Q Wasn't the concern that was being discussed or
9 the claim that was being made by other members of the
10 Burbank Police Department that Mr. Taylor had protected
11 Omar in the Portos investigation?

12 MR. BRIZZOLARA: Objection. Compound. Vague
13 and ambiguous.

14 THE WITNESS: I don't recall that.

15 BY MS. PELLETIER:

16 Q Do you recall -- you've talked about concerns
17 you heard. Do you recall hearing concerns by other
18 members of the Burbank Police Department that
19 Mr. Taylor had covered up for Mr. Rodriguez in the
20 Portos investigation?

21 MR. BRIZZOLARA: Objection. Compound.

22 THE WITNESS: No, I don't recall that.

23 BY MS. PELLETIER:

24 Q Do you recall that allegation ever being made,
25 that Mr. Taylor had covered up for Mr. Rodriguez in the

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1 Portos Bakery investigation?

2 A I don't recall that, ma'am.

3 Q Isn't it true that the backlash against
4 Mr. Taylor came out of the Portos Bakery investigation?

5 MR. BRIZZOLARA: Objection. Vague and
6 ambiguous. What do you mean by backlash? The fact he
7 was demoted?

8 MS. PELLETIER: No.

9 BY MS. PELLETIER:

10 Q Isn't it true that the reason why there were
11 concerns expressed about Mr. Taylor was because of his
12 handling of the Portos Bakery investigation?

13 MR. BRIZZOLARA: Objection. Vague and
14 ambiguous. Concerns expressed by whom?

15 BY MS. PELLETIER:

16 Q You can answer.

17 A I'm not aware.

18 Q So is it your testimony that you don't recall
19 one way or the other whether the topic of the Portos
20 Bakery investigation came up at the April 10th meeting
21 at Jose Duran's girlfriend's house?

22 MR. BRIZZOLARA: Objection. Misstates his
23 testimony.

24 THE WITNESS: No, I don't recall that being
25 part of that discussion. I don't recall the specifics.

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1 BY MS. PELLETIER:

2 Q Sounds like you don't recall the specifics of
3 what was discussed at that meeting at all; is that
4 fair?

5 A Yes, ma'am, pretty much.

6 Q Do you recall discussing with any member of
7 that group, Mr. Duran, Mr. Taylor, or Mr. Rodriguez
8 that a Burbank police officer had come forward against
9 Mr. Rodriguez?

10 MR. BRIZZOLARA: Objection. Lacks foundation.
11 He already testified that Deputy Chief Taylor wasn't at
12 that meeting.

13 MS. PELLETIER: I'm talking about at any time,
14 not at the meeting.

15 BY MS. PELLETIER:

16 Q Did any of them ever -- did you ever discuss
17 with any of them that a Burbank police officer had come
18 forward to give testimony or to provide statements
19 against Mr. Rodriguez in conjunction with the Portos
20 Bakery?

21 A No, ma'am.

22 Q And you had no discussions with Mr. Duran
23 about that?

24 MR. BRIZZOLARA: Let me just break in here,
25 because aren't you asking questions now -- the officer

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1 that allegedly came forward to -- about the Portos
2 Bakery, isn't that the guy that's suing this
3 individual? So how is that question not related to his
4 other case?

5 MS. PELLETIER: What I'm trying to get at is
6 what the discussion was at this meeting. You are
7 right. I will -- I will agree to defer questions that
8 relate to that litigation. I do not --

9 MR. BRIZZOLARA: I'm not disagreeing it may be
10 a relevant question. I think all these cases are
11 interrelated to a certain extent, but I think he's
12 entitled to have Mr. Ramirez here present because that
13 clearly is testimony that relates to that other case.

14 MS. PELLETIER: All I'm asking is what he knew
15 in his mind at the time of that April 10th meeting;
16 however, unlike the prior questions that you've
17 instructed him not to answer that pertain solely to
18 conversations between Mr. Taylor and him that have
19 nothing to do with the Dalia investigation, on this
20 line of questioning I will agree to defer.

21 My motion is going to be on the line of
22 questioning where all I'm trying to ask him about is
23 what you asked him about this morning that has nothing
24 to do with Dalia. So I'll hold off on those questions.

25 MR. BRIZZOLARA: You don't have to bring any

1 motion. I'm sure that we're going to be able to get
2 all these questions answered.

3 MS. PELLETIER: I think the obstructionist
4 behavior is wholly improper, and I'm going to move on
5 it.

6 MR. BRIZZOLARA: I think your motion will not
7 be well taken since nobody is refusing to answer any
8 questions here. It's just to have an attorney present.

9 MS. PELLETIER: The transcript speaks for
10 itself.

11 You're refusing to allow me to cross-examine
12 him, and you've suggested it to him, and so he's
13 refusing. He's saying he won't answer those questions
14 without an attorney present. I think that's clear from
15 the record, and I'll bring a motion.

16 MR. BRIZZOLARA: I can't --

17 MS. PELLETIER: You've told me you're going to
18 stop -- so then let me start asking the questions
19 again. Do we need to do this again? You've told me
20 you're going to walk out.

21 MR. BRIZZOLARA: I'll stop and I'll call
22 Eugene Ramirez and see if he can come out.

23 You want him to come out? Because we'll be
24 here all day.

25 MS. PELLETIER: Why don't we do that. Let's

1 do that. Let's see if we can get Eugene --

2 MR. BRIZZOLARA: We'll do that right now.
3 We'll see if he's available right now, if that's what
4 you want to do. You better cancel your other
5 deposition. Is that what you want to do?

6 MS. PELLETIER: Yes.

7 MR. BRIZZOLARA: Okay. You want to call
8 Eugene Ramirez and tell him you're going to question on
9 these matters and have him come on out?

10 MS. PELLETIER: I will call Eugene Ramirez
11 and -- well, no. I'm actually not going to do that
12 because he's not entitled to counsel for this. If you
13 want to call Eugene Ramirez because you're asserting
14 the objection, you may do that.

15 MR. BRIZZOLARA: Well, I will call him. But
16 if you're saying he's not entitled to counsel, I don't
17 agree with that. How would that possibly be true?

18 MS. PELLETIER: Because -- we've been down
19 this road. All I'm asking him about is conversations
20 between the two of them that have nothing to do with
21 Dalia, exactly what he testified to this morning. I
22 think the record is crystal clear that you don't want
23 that evidence to be put on the record until the witness
24 can be more properly prepared, and I'll bring a motion
25 on that. You've said you're going to stop the

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1 deposition. You've prevented me --

2 MR. BRIZZOLARA: I'm going to call Mr. Ramirez
3 right now and see if he can come on out. If that's
4 what the witness wants me to do, I will do that.

5 So let's go off the record for a second and
6 see what we want to do here.

7 (Recess taken.)

8 MR. BRIZZOLARA: Back on the record. I just
9 want to point out right now that when I just made the
10 statement that the City of Burbank is not fair to its
11 employees and to its witnesses, former Chief Stehr
12 laughed and said that's hilarious. So I think that
13 speaks volumes toward the way the City is handling this
14 case. What I'm going to do is I'm going to go back off
15 the record and --

16 MS. PELLETIER: No, I'm going to comment on
17 that.

18 MR. STEHR: I said hilarious because of this,
19 not that.

20 MS. PELLETIER: What he was that the
21 discussion -- what he was commenting on was the
22 discussion that was going on between you and I, the
23 argument that's been going on for at least the past
24 hour.

25 MR. STEHR: Absolutely.

1 MS. PELLETIER: And the commentary between the
2 two of us, he laughed and said this is hilarious. I
3 was present as well, so misstating what was going on is
4 not fair to Chief Stehr.

5 MR. BRIZZOLARA: Ex Chief Stehr, I guess, we
6 should say.

7 MR. STEHR: Retired.

8 MS. PELLETIER: Yes. So if you're -- as I
9 understand it, since we're still on the record, you are
10 going to -- you've decided that you're going to call
11 Mr. Ramirez before I can ask any further questions on
12 the topic of prior testimony by this witness, so --

13 MR. BRIZZOLARA: Well, you just asked another
14 question that related directly to an individual that
15 has changed his story and is now suing, apparently, the
16 City of Burbank and others for alleged intimidation.

17 MS. PELLETIER: I told you that I will not ask
18 any questions about the Dalia matter, and I have not
19 insisted on answers on that. All I want today is
20 answers to the questions about what Mr. Taylor told
21 this witness as testified to by this witness this
22 morning. That's all I want, and you have said without
23 his counsel present he's not going to answer those
24 questions and you're going to stop the deposition.
25 You've now said you're going to go call his counsel.

1 MR. BRIZZOLARA: Well, if you don't have any
2 other questions besides those, I will call his counsel.

3 MS. PELLETIER: I do have other questions
4 besides that.

5 MR. BRIZZOLARA: Does it involve anything that
6 relates to the other case in which he's a defendant?

7 MS. PELLETIER: No.

8 MR. BRIZZOLARA: I don't see how you separate
9 these cases in your mind, actually, but --

10 MS. PELLETIER: It does not -- and -- but I
11 think part of the problem is I want to ask him
12 questions about some of the things that Mr. Taylor
13 supposedly relayed to him this morning, and I think
14 that I start getting into that, and then I'm not
15 allowed to ask him any questions because he and you
16 won't let me about what he said previously on that or
17 what the background of that may be without his counsel
18 present because now there's a potential, you know,
19 issue there. I don't know how I proceed in this
20 deposition with all the lines you've drawn. I will not
21 ask about Dalia, but I definitely want to ask about
22 these comments that he claims Deputy Chief Taylor made
23 to him.

24 MR. BRIZZOLARA: If we have Mr. Ramirez here,
25 you can ask him all those questions.

1 MS. PELLETIER: Well, that's what you're
2 saying. I think I'm allowed to ask him those questions
3 without Mr. Ramirez, but we're going around in circles,
4 so either call him or tell me you're going to halt the
5 deposition.

6 MR. BRIZZOLARA: I'm going to call him now,
7 see if he can be here.

8 (Recess taken.)

9 MR. BRIZZOLARA: We went off the record so
10 that I would have the opportunity to speak to the
11 counsel for the deponent, Mr. Eugene Ramirez, of the
12 Manning and Marder firm, which I did during the break.
13 He advised me that he's in San Bernardino. He can't be
14 present today for this deposition. However, he does
15 want to be present for the remainder of the deposition,
16 and he specifically requested that I stop the
17 deposition at this time so that he can be present. So
18 that's what I'm going to do. I'm going to suspend the
19 deposition at this point. However, we will be
20 reconvening this deposition, so counsel will have a
21 chance to ask whatever questions she wants at that time
22 with Mr. Ramirez being present. And where in the
23 meantime we'll also bring some Pitchess motions, so we
24 can hopefully ask our remaining questions at that time,
25 too.

1 So let me propose the following stipulation
2 for this session of the deposition --

3 MS. PELLETIER: And before you do that, I'll
4 just put on the record that I disagree with that
5 tactic, but I don't have control of the court reporter,
6 so I don't have much say so in it, but go ahead. You
7 can propose your standard stipulation about what
8 happens with the transcript.

9 MR. BRIZZOLARA: Let me propose the following
10 stipulation; that the court reporter be relieved of her
11 duties under the Code. Once she has prepared the
12 original deposition transcript and has forwarded same
13 directly to the -- I'm going to ask that you forward it
14 to counsel for the deponent, to Mr. Ramirez. That the
15 deponent will have 30 days to read, sign, and correct
16 his deposition transcript under penalty of perjury.
17 That if the original transcript is lost or is unsigned,
18 a certified unsigned copy can be used for all purposes
19 under the Code.

20 We would ask that after the deposition
21 transcript has been reviewed and signed, that it be
22 returned to us for safekeeping, and that we will
23 maintain the original deposition transcript throughout
24 this proceeding to be made available upon reasonable
25 notice.

1 MS. PELLETIER: So stipulated as to the
2 portion of that about the transcript.

3
4 (Whereupon, the deposition was
5 concluded at 1:20 p.m.)
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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF LOS ANGELES.)
4

5 I, the undersigned, hereby declare that I am
6 the witness in the within matter, that I have read the
7 foregoing deposition and know the contents thereof, and
8 I declare that the same is true of my own knowledge
9 except as to those matters which are therein stated
10 upon my information and belief, and as those matters, I
11 believe them to be true.

12 I declare under penalty of perjury that the
13 foregoing is true and correct.

14 Executed on the _____ day of _____,
15 2010, at _____, California.
16
17
18

19 _____
20 JON MURPHY
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3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby
5 certify:

6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were placed under oath; that a verbatim
10 record of the proceedings was made by me using machine
11 shorthand which was thereafter transcribed under my
12 direction; further, that the foregoing is an accurate
13 transcription thereof.

14 I further certify that I am neither
15 financially interested in the action nor a relative or
16 employee of any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20 Dated: _____

APR 1 2010

21
22 
23

24 ARIELA PASTEL, CSR

25 CERTIFICATE No. 13167



4 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
voice 213.236.0600 - fax 213.236.2700
www.bwslaw.com

Direct No.: 213.236.2834
Our File No.: 06147-0015
kpelletier@bwslaw.com

April 22, 2010

VIA U.S. MAIL AND FACSIMILE

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, CA 90404

Re: Taylor v. City of Burbank

Dear Mr. Brizzolara:

I am writing to meet and confer with you regarding the aborted deposition of Lt. Jon Murphy, which took place on March 26, 2010. While we extensively met and conferred on that date, I thought I would write before filing a motion pertaining to this deposition. Since you refused to allow the deposition to continue so that I could cross-examine Lt. Murphy on the same subjects you questioned him about on direct, I am going to ask the court to preclude plaintiff from using the testimony elicited at that deposition, as well as seek my fees in attending the deposition. If you would like to discuss or are willing to stipulate to this, we may be able to avoid the motion.

Please contact me at your earliest convenience so that we can further meet and confer about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristin".

KRISTIN A. PELLETIER

KAP:BH

cc: Gregory W. Smith, Esq.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	2758	
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444 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
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FACSIMILE MESSAGE

DATE: April 22, 2010

FILE No.: 06147-0015

To:
Christopher Brizzolara, Esq.

FAX No.:
(310)-656-7701

PHONE No.:

FROM: Kristin A. Pelletier, Esq. PHONE No.: 213.236.0600

RE: Taylor v. City of Burbank

NUMBER OF PAGES WITH COVER PAGE: 2

MESSAGE:

CHRISTOPHER
BRIZZOLARA
Attorney at Law

1528 16th Street
Santa Monica,
California 90404
Telephone: (310)
394-6447
Telecopier: (310)
656-7701

April 26, 2010

FAX TRANSMISSION COVER SHEET

To: Kristin A. Pelletier, Esq.
Gregory W. Smith, Esq.
LAW OFFICES OF GREGORY W. SMITH

Fax#: (213) 236-2700
(818) 712-4004

Sender: Christopher Brizzolara, Esq.

Our Case#:

Re: *Taylor v. City of Burbank, et al.*

Number of Pages 3 (including cover sheet). If you do not receive all the pages, please call (310) 394-6447.

Enclosed Please Find: Letter of this date. Thanks, C.B.

- | | |
|---|--|
| <input type="checkbox"/> Please Handle | <input type="checkbox"/> For Your Information |
| <input type="checkbox"/> In Accordance With Your Request | <input type="checkbox"/> For Your File |
| <input type="checkbox"/> May We Please Have A Reply | <input type="checkbox"/> For Your Review and Comment |
| <input type="checkbox"/> Please Sign Where Indicated and Return | <input type="checkbox"/> Other: _____ |

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Christopher Brizzolara
Attorney At Law

1528 16th Street
Santa Monica, California
90404
Telephone: (310) 394-6447
Telecopier: (310) 656-7701

April 26, 2010

VIA TELEFACSIMILE

Kristin A. Pelletier, Esq.
Burke, Williams & Sorenson, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: *Taylor v. City of Burbank, et al.*

Dear Ms. Pelletier:

I have received your letter of April 22, 2010 as well as my co-counsel's non-exclusive response thereto dated April 23, 2010. Your recitation of the events surrounding the deposition of Lt. Murphy are inaccurate. As you know, neither my co-counsel or myself represent Lt. Murphy in this matter. As you also know, Lt. Murphy is represented in a related matter by Eugene Ramirez, Esq., one of the named partners in the Manning & Marder, et al. firm. As you further know, during his deposition Lt. Murphy requested that his attorney Mr. Ramirez be present to represent him during the deposition.

At the request of Lt. Murphy, we called and spoke via telephone with Mr. Ramirez. Mr. Ramirez advised us that he was in San Bernardino as was not available to journey to the deposition at that time. Mr. Ramirez requested that we suspend the deposition until he could be personally present at same, however, he indicated to us that he would cooperate with you in scheduling a further session of the deposition of Lt. Murphy, at which time you are of course free to resume your questioning of Lt. Murphy. Since this is the United States of America, and individuals have a right to counsel of their choice in legal proceedings, and out of professional courtesy and cooperation with Lt. Murphy and Mr. Ramirez, we agreed with Mr. Ramirez to suspend the deposition so that he could be present to represent Lt. Murphy thereat. As such, there is no need to file any motion to compel regarding this deposition, since it is our understanding that Lt. Murphy will be appearing for a further session of his deposition when same has been scheduled on a date and time convenient with the deponent, his counsel, as well as the parties to this action.

Further, as you know, we also discussed during the deposition that we would be filing Pitchess motions to obtain the internal affairs and other records pertaining to the investigations of the incidents where it has been alleged that Burbank Police Department personnel participated in a burglary and other misconduct at the Burbank Police Department facilities, and sexual harassment and other misconduct at the Burbank Animal

Kristin A. Pelletier, Esq.,
Re: Taylor v. City of Burbank, et al.
April 26, 2010
Page 2

Shelter. As you also know, these incidents are directly relevant to the plaintiff's whistleblower retaliation and other causes of action in this case. As you will recall, Lt. Murphy was reluctant to testify regarding his communications regarding these matters with the plaintiff and others, including ex-Chief Tim Stehr, until the Court has ruled upon Pitchess motions seeking the information, documents, and other items pertaining to these incidents. Therefore, we will not be able to complete the deposition of Lt. Murphy in any event until we have had the Pitchess issues regarding the above matters resolved by the Court.

In summary, any motion to compel regarding the deposition of Lt. Murphy would be premature and unnecessary at this time, and would lack substantial justification. We encourage you to contact Mr. Ramirez and our offices to schedule a convenient and logical date for a further session of the deposition of Lt. Murphy taking into account the issues set forth above. We do not believe that your offices have made a reasonable and good faith effort to resolve each of the issues regarding this deposition at this time. Nonetheless, as set forth above, we stand ready, able, and willing to do so. We encourage you to contact Mr. Ramirez and ourselves so that we may amicably resolve these matters without the need of court intervention.

Should you have any questions or comments regarding this matter, please do not hesitate to contact us.

Very truly yours,



Christopher Brizzolara

CB/np

cc:

Gregory W. Smith, Esq.
LAW OFFICES OF GREGORY W. SMITH

FAX

PAGE 1 of 3

LAW OFFICES OF GREGORY W. SMITH
6300 Canoga Avenue, Suite 1590
Woodland Hills, California 91367
Telephone No.: (818) 712-4000 • (213) 385-3400
Facsimile No.: (818) 712-4004

TO : Kristin A. Pelletier, Esq.
FROM : Gregory W. Smith, Esq.
RE : William Taylor v. City of Burbank
Los Angeles County Superior Court Case No. BC 422 252
DATE : April 23, 2010

MESSAGE:

ORIGINAL/COPY TO FOLLOW BY MAIL: YES [x] NO []

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SENT TO FAX NUMBER: (213) 236-2700. If you have any problems receiving this FAX, please call us at the above number.

LAW OFFICES OF
GREGORY W. SMITH
6300 CANOGA AVENUE, SUITE 1590
WOODLAND HILLS, CALIFORNIA 91367
TELEPHONE (818) 712-4000 • (213) 385-3400
FACSIMILE (818) 712-4004

April 23, 2010

VIA FACSIMILE & U.S. MAIL

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Re: **William Taylor v. City of Burbank**
Los Angeles County Superior Court Case No. BC 422 252

Dear Ms. Pelletier:

My apologies for not responding sooner to your letter regarding the rescheduling of Bill Taylor's deposition. As I am sure you know, Capt. Taylor's Skelly hearing occurred this Monday, April 19, 2010. Capt. Taylor has been advised that he has been terminated from the Burbank Police Department and we are awaiting official notice from the Burbank Police Department on the termination. It is my understanding that notice of termination must be provided within 5 days after the Skelly hearing. Accordingly, we believe Capt. Taylor will be officially terminated from the Department on April 26, 2010.

Consequently, after the termination, my client will be filing another DFEH claim and we will seek leave of court to amend his lawsuit to reflect the termination. Since the termination of Capt. Taylor adds a whole new dimension to the current lawsuit, I believe it is prudent to wait until the complaint is amended before continuing any depositions. Therefore, Capt. Taylor will not attend the deposition on the date noticed in your previous letter. If, however, you can give me a reasonable reason why Capt. Taylor's deposition should be commenced before his lawsuit is amended, I will be glad to discuss it with you. I think you can understand, that I don't want to continually bring Capt. Taylor back to multiple depositions, especially given that he has high blood pressure and that the depositions exacerbate his condition.

I will also respond to your letter dated April 22, 2010. I have reviewed your letter, and although I was not present at the deposition, I believe Murphy's deposition was postponed pending a ruling on our pitchess motion. Your letter doesn't clearly state what you desire. I'm not sure whether you are notifying us that you intend to bring a motion to compel or whether you are

Re: William Taylor v. City of Burbank
Kristin A. Pelletier, Esq.
April 23, 2010
Page Two

attempting to set a new date for Murphy's deposition. Would you please clarify your position.

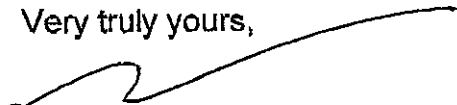
Further, I believe the Court will be hearing the pitches motion in early May, and after the motion is granted and documents are provided, we can once again take Murphy's deposition. If you like, we can set Murphy's deposition in late May. Once again, if you have a reasonable reason why Murphy's deposition should be taken before the pitches motion is ruled upon and documents are provided, I would be glad to discuss those reasons with you. However, I see no urgent reason to take Murphy's deposition before early May.

In your letter you made the statement, "I am going to ask the court to preclude plaintiff from using the testimony elicited at that deposition . . ." I am at a loss to understand what authority you are using that makes you believe a court will actually entertain your request. Issue sanctions and the like are only ordered after a violation of a court order. Your remedy in this case, is to file a motion to compel. However, the deposition was discontinued based upon evidentiary issues unique to police officers. Since we are not precluding you from deposing Murphy in the near future, it is unlikely the court will grant a motion to compel.

In the final portion of your letter you state; "If you would like to discuss or are willing to stipulate to this, we may be able to avoid the motion." I don't understand what you mean when you were requesting that we stipulate to something. Are you asking us to stipulate to precluding Murphy's testimony?

In conclusion, we will be willing to set Capt. Taylor's deposition in June of 2010, so that we can amend the lawsuit, and you have sufficient time to respond to the new allegations. With respect to Murphy, we are willing to reschedule his deposition in late May 2010. Let me know what your thoughts are on these issues. Just a side note, I will be out of the country from May 6, through June 1, 2010.

Very truly yours,



Gregory W. Smith

cc: Christopher Brizzolara, Esq.
Carol A. Humiston, Sr. Asst. City Atty.

PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On April 28, 2010, I deposited with Federal Express, a true and correct copy of the within documents:

DEFENDANT'S NOTICE OF MOTION AND MOTION FOR AN ORDER IMPOSING AN EVIDENCE SANCTION AGAINST PLAINTIFF WILLIAM TAYLOR AND FOR MONETARY SANCTIONS OF \$6,891 AGAINST PLAINTIFF AND HIS COUNSEL CHRISTOPHER BRIZZOLARA FOR MISUSE OF THE DISCOVERY PROCESS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KRISTIN A. PELLETIER IN SUPPORT THEREOF

in a sealed envelope, addressed as follows:

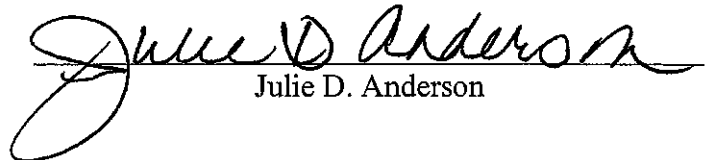
Gregory W. Smith, Esq.
Law Offices of Gregory W. Smith
6300 Canoga Ave., Suite 1590
Woodland Hill, CA 91367

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, CA 90404
Fax: (310) 656-7701

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 28, 2010, at Los Angeles, California.


Julie D. Anderson